



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 63

[IB Docket No. 16-155, FCC 16-79]

Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (Commission) proposes changes to our rules and procedures related to certain applications and petitions for declaratory ruling involving foreign ownership (together, “applications”). The Commission refers certain applications to the relevant Executive Branch agencies for their input on any national security, law enforcement, foreign policy, and trade policy concerns that may arise from the foreign ownership interests held in the applicants and petitioners (together, “applicants”). As part of our effort to reform the Commission’s processes, we seek to improve the timeliness and transparency of this referral process. More specifically, our goals here are to identify ways in which both the Commission and the agencies might streamline and facilitate the process for obtaining information necessary for Executive Branch review and identify expected time frames, while ensuring that we continue to take Executive Branch concerns into consideration as part of our public interest review.

DATES: Submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and replies on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by IB Docket No. 16-155, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's ECFS Website: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail to FCC504@fcc.gov, phone: 202-418-0530 (voice), tty: 202-418-0432.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Krech or Veronica Garcia-Ulloa, Telecommunications and Analysis Division, International Bureau, FCC, (202) 418-1480 or via email to Veronica.Garcia-Ulloa@fcc.gov, <mailto:David.Krech@fcc.gov>. On PRA matters, contact Cathy Williams, Office of the Managing Director, FCC, (202) 418-2918 or via email to Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 16-155, adopted on June 24, 2016 and released on June

24, 2016. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. 20554.

The document also is available for download over the Internet at:

http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0624/FCC-16-79A1.pdf.

Comment Filing Procedures

Pursuant to §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's ECFS website at <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., S.W., Room TW-A325, Washington, D.C. 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All

hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington D.C. 20554.

Synopsis of Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking, we propose changes to our rules and procedures related to certain applications and petitions for declaratory ruling involving foreign ownership. On May 10, 2016, the National Telecommunications and Information Administration (NTIA) filed a letter on behalf of the Executive Branch requesting that the Commission make changes to its processes that would help facilitate a more streamlined Executive Branch review process. The Executive Branch asks the Commission to require applicants seeking international section 214 authorizations or transfer of such authorizations, submarine cable landing licenses, satellite earth station authorizations, and section 310(b) foreign ownership rulings to provide certain information as part of their applications. The Executive Branch specifically asks that applicants with reportable foreign ownership provide certain information regarding ownership, network operations, and related matters, and that all applicants, regardless of whether they have reportable foreign ownership, certify that they will comply with applicable law enforcement assistance requirements and respond truthfully and accurately to lawful requests for information and/or legal process. The NTIA Letter states that such requirements will improve the ability of the Executive Branch to expeditiously and

efficiently review referred applications, particularly in regard to identifying and assessing applications that raise national security or law enforcement concerns. The letter further states that the proposed certifications, in many cases, may eliminate the need for national security or law enforcement conditions, and thus facilitate expeditious responses to the Commission on specific applications.

2. Based on the NTIA Letter and the comments received, we propose specific changes in our rules, designed to address the Executive Branch's request in a manner that furthers our mandate to serve the public interest. We also propose to adopt time frames for Executive Branch review of applications and other changes to our processing rules. We seek comment on those proposed changes. We believe that implementation of these rule changes would speed the action on applications while continuing to take into consideration relevant national security, law enforcement, foreign policy, and trade policy concerns.

3. The Commission refers certain applications to the Executive Branch when there is reportable foreign ownership in the applicant. Specifically, where an applicant has a ten percent or greater direct or indirect owner that is not a U.S. citizen, Commission practice has been to refer an application for: (1) International section 214 authority; (2) assignment or transfer of control of domestic or international section 214 authority; (3) a submarine cable landing license; and (4) assignment or transfer of control of a submarine cable landing license. The Commission also refers petitions seeking authority to exceed the section 310(b) foreign ownership limits for broadcast and common carrier wireless licensees, including common carrier satellite earth stations.

4. Our understanding is that the national security and law enforcement agencies generally initiate review of an application by sending the applicant a set of questions seeking

information on the five percent or greater owners of the applicant, the names and identifying information of officers and directors of companies, the business plans of the applicant, and details about the network to be used to provide services. The applicant provides answers to these threshold and any follow-up questions directly to the agencies, without involvement of Commission staff. The agencies use the information gathered through the questions to conduct their review and determine whether they need to negotiate a mitigation agreement with the applicant to address potential national security or law enforcement issues. Mitigation agreements can take the form of a letter of assurance (LOA) or a national security agreement (NSA). An LOA is a letter from the applicant to the agencies in which it agrees to undertake certain actions and that is signed only by the applicant. An NSA is a formal agreement between the applicant and the agencies and is signed by all parties.

5. Upon completion of review, the Executive Branch notifies the Commission of its recommendation in typically one of two forms. The national security and law enforcement agencies may have no comment, in which case they file a letter to this effect, and the Commission moves forward with its action on the application. Alternatively, the agencies may advise the Commission that they have no objection to the grant of an application so long as the applicant complies with the terms of the relevant LOA or NSA. In such case, a grant of the application will typically be subject to the express condition that the applicant abide by the commitments and undertakings contained in the LOA and or NSA. More specifically, a typical authorization states that a failure to comply and/or remain in compliance with any of the commitments and undertakings in the LOA or NSA shall constitute a failure to meet a condition of such authorization, and thus grounds for declaring that the authorization has been terminated under the terms of the condition without further action on the part of the Commission.

See IB Public Notice, 30 FCC Rcd at 11018; see, e.g., Wypoint Telecom, Inc., Termination of International Section 214 Authorization, Order, 30 FCC Rcd 13431, 13431-32, para. 2 (IB 2015). Failure to meet a condition of the authorization may also result in monetary sanctions or other enforcement action by the Commission. 47 U.S.C. 312; 47 U.S.C. 503. A third type of notification might involve a request to deny an application on national security or law enforcement grounds. To date, the agencies have not requested that the Commission deny an application. Regardless of the type of response from the Executive Branch, the Commission acts quickly to dispose of an application after the agencies complete their review.

6. On May 12, 2016, the International Bureau released a public notice seeking comment on the May 10, 2016 NTIA Letter. Based on the NTIA Letter and the comments we have received, we identify below several proposals to make the Executive Branch review process more efficient and transparent. These include proposals that address the following requests set out in the NTIA Letter: (1) Requiring certain applicants with reportable foreign ownership to file information regarding ownership, network operations, and related matters; and (2) requiring applicants, regardless of whether they have reportable foreign ownership, to certify they will comply with certain law enforcement assistance requirements and respond truthfully and accurately to lawful requests for information and/or legal process. They also include additional proposals to establish time frames for Executive Branch review of applications and modify our processing rules. We seek comment on these and other ways to expedite the review process and increase transparency while ensuring that relevant Executive Branch concerns receive consideration as part of the Commission's public interest review.

7. **TYPES OF APPLICATIONS.** We propose that only certain types of applications may be required to provide the information and certifications requested by the

Executive Branch in the NTIA Letter. In the NTIA Letter, the Executive Branch requests that applicants seeking international section 214 authorizations or transfer of such authorizations, submarine cable landing licenses, satellite earth station authorizations, and section 310(b) foreign ownership rulings, provide certain information and certifications as part of their applications. We currently refer to the Executive Branch applications with reportable foreign ownership for international section 214 authorizations, applications to assign or transfer control of domestic or international section 214 authority, submarine cable landing licenses and applications to assign or transfer control of such licenses, and petitions for section 310(b) foreign ownership rulings (broadcast, common carrier wireless, and common carrier satellite earth stations). We do not propose to expand the types of applications that we refer to the Executive Branch.

8. Currently, we refer applications for transfer of control of domestic section 214 authority that have reportable foreign ownership and that do not have a corresponding international section 214 transfer of control application. The NTIA Letter does not seek to review these types of applications, nor do we propose to include these applications among those we will refer to the Executive Branch or to require the requested information and certifications. We seek comment on this and whether there are situations where we should refer a domestic-only section 214 authority transfer of control application to the Executive Branch.

9. EchoStar/Hughes and SIA raise concerns that the NTIA Letter seeks to require non-common carrier earth station licenses to be subject to the information and certification requests by the Executive Branch. We have not been referring earth station applications to the Executive Branch because most earth stations are authorized on a non-common carrier basis, and we do not collect ownership information in the applications. An earth station application, however, may be included as part of a referral of associated applications, such as an international

section 214 application or an assignment or transfer of control application. We propose to maintain our current practice and only refer common carrier earth station applications if the applicant requires a section 310(b) foreign ownership ruling. Consequently, an applicant for an earth station license would not be required to provide the information and certifications sought by the Executive Branch as part of its application, but would only need to provide such information as part of its section 310(b) petition if it required a foreign ownership ruling. Similarly, we propose that an applicant for a broadcast or common carrier wireless license not be required to provide the information as part of its application, but only need to provide such information as part of its section 310(b) petition if it required a foreign ownership ruling. We seek comment on whether these are the appropriate types of applications to be required to provide the information and certifications requested by the Executive Branch and be considered for referral to the Executive Branch for national security, law enforcement, foreign policy, and trade policy concerns.

10. OWNERSHIP, NETWORK OPERATIONS, AND OTHER INFORMATION REQUIREMENTS. We propose to require applicants with reportable foreign ownership to provide information on ownership, network operations, and related matters when filing their applications. For international section 214 authorizations and submarine cable landing licenses, the applicant must report all individuals or entities with a ten percent or greater direct or indirect ownership interest in the applicant. 47 CFR 1.767(a)(8), 63.18(h). For assignment or transfer of control applications, the applicant must report all individuals or entities with a ten percent or greater direct or indirect ownership interest in the applicant. 47 CFR 1.767(a)(11), 63.24. Common carrier wireless licensees, common carrier satellite earth station licensees, and broadcast licensees must seek a foreign ownership ruling if their foreign

ownership would exceed the relevant benchmark set out in section 310(b) of the Act. 47 U.S.C. 310(b). The NTIA Letter states that receiving the requested information as part of an application will allow the Executive Branch to start its review of the application sooner than is possible under the current review process. We agree. We propose to require that the information be filed at the time an applicant submits its application to the Commission. We seek comment on this proposal and any alternative or additional methods to streamline the application process and increase transparency, while providing the Executive Branch with the information needed to conduct its national security and law enforcement review.

11. Categories of Information. Under the current process, the questions asked of applicants by the Executive Branch require information that is not included in the applications submitted to the Commission. The NTIA Letter states that the relevant agencies need answers to these questions to evaluate whether an application may raise national security or law enforcement concerns. The questions may vary depending on the specifics of the application. The applicant generally cannot prepare answers in advance of receiving the questions. Because tailoring the questions sent to each applicant takes time, there often is some delay between when the Commission refers the application and when the agencies send questions to the applicant. The NTIA Letter notes that there is currently no required timeline on the applicant's response to the questions. Thus, it may take the Executive Branch additional time to obtain complete answers from applicants, which adds delay. The agencies also may have follow-up questions for the applicant upon review of the initial set of answers. This, among other factors, can lead to longer time periods for review.

12. To help ensure that the relevant departments and agencies have the information needed to review an application promptly, the Executive Branch requests that we require

applicants with reportable foreign ownership seeking international section 214 authorizations or transfer of such authorization, submarine cable landing licenses, and satellite earth station authorizations, as well as petitioners for section 310(b) foreign ownership rulings, to provide as part of their applications detailed and comprehensive information in the following areas:

- (1) Corporate structure and shareholder information;
- (2) Relationships with foreign entities;
- (3) Financial condition and circumstances;
- (4) Compliance with applicable laws and regulations; and
- (5) Business and operational information, including services to be provided and network infrastructure.

13. The Executive Branch asks the Commission “to adopt requirements that focus on the above categories of information to be collected, while also providing sufficient flexibility for the Commission to prescribe and, as necessary, modify the specific questions posed to applicants.” The Executive Branch recommends that the Commission propose and seek comment on specific questions through an information collection process consistent with the Paperwork Reduction Act of 1995 (PRA) process. For illustrative purposes, the Executive Branch also filed sample questions that show the types and extent of the information it seeks to obtain. The introductory language for the sample questions states that the questions seek “information regarding the business organization and services, network infrastructure, relationships with foreign entities or persons, historical regulatory and penal actions, and capabilities to comply with applicable legal requirements, and would be shared with relevant Executive Branch departments and agencies to assist in the review of public interest factors.”

14. The NTIA Letter states that this information is necessary for the agencies to assess whether an application with reportable foreign ownership raises national security or law enforcement concerns, including preventing abuses of U.S. communications systems, protecting the confidentiality, integrity and availability of U.S communications, protecting the national infrastructure, preventing fraudulent or other criminal activity, and preserving the ability to effectuate legal process for communications data. It states that receiving the information at the time of referral, rather than having to request it after referral, will help the Executive Branch begin review of the application promptly after referral. Commenters state that requiring these categories of information may help expedite the process, but may go beyond the information the Executive Branch currently requests. For example, one commenter asserts that seeking information on financial condition and circumstances and compliance with applicable laws and regulations “seems far outside the scope of [the Executive Branch’s] review of applications for ‘national security, law enforcement, foreign policy, or trade concerns.’” Others argue that the requested information is duplicative of information provided as part of the Commission’s application. We seek comment on this request and on the proposed categories of information. Are there more narrowly tailored questions that can adequately serve the goals sought in the NTIA Letter? Are there additional questions that should be included, and, if so, what are those questions?

15. Information Filing. We propose to require applicants with reportable foreign ownership seeking an international section 214 authorization or a submarine cable landing license or to assign or transfer control of such authorizations, and petitioners for section 310(b) foreign ownership rulings (common carrier wireless, common carrier satellite earth stations, or broadcast) to provide the information requested by the NTIA Letter at the time they file their

applications or petitions. We seek comment on whether there are situations where an applicant should not be required to file the information. For example, should the Commission require an applicant to provide such information when the applicant has an existing LOA or NSA and there has been no material change in the foreign ownership since it negotiated the LOA or NSA? Should non-facilities-based carriers be subject to the information request?

16. Publicly Available Questions. We propose that the Commission retain flexibility regarding the specific questions to be answered and thus propose to include in the rules the categories of questions to be answered but not to place the specific questions in the rules. The NTIA Letter urges the Commission to adopt requirements that focus on the categories of information to be collected so as to afford the Commission flexibility to vary the specific questions as appropriate to the circumstances at the time. The NTIA Letter notes that the specific questions would be subject to the PRA as an information collection. We propose to adopt the approach described in the Executive Branch request, and after the new rules are adopted, we would start a PRA process with the specific questions, and then make the questions publicly available on a website as a downloadable document so it is readily available to applicants. This approach would be similar to our practice of outlining the requirements for an application in our rules and then including specific questions that elicit the required information during the PRA process to adopt the forms for filing the application. If we adopt this proposal, applicants and other interested parties will have the opportunity to comment on the specific questions during the PRA review process. We seek comment on this proposal.

17. We also seek comment on whether the use of a publicly available set of standardized questions for which the answers must be provided at the time of filing an application will help to streamline the Executive Branch review process. For instance, will the

inclusion of responses to the standardized questions at the time the application is filed result in more timely review than the use of individualized questions that are sent to the applicant after the application has been filed? Many of the commenters support having the questions publicly available and the answers provided at the time the application is filed, stating that this should expedite Executive Branch review. CTIA, while supporting publicly-available standardized questions, recommends that the answers not be provided when the application is filed because the answers would likely delay and complicate applications. CTIA instead suggests that applicants “certify in their application that they will provide complete responses to the questionnaire within a particular time frame after filing the application.” We seek comment on whether the answers should be provided when the application is filed with the Commission, and if not, how a later filing would serve the goal of expediting Executive Branch review of the applications.

18. We propose that, although the questions would be standardized, they vary by category of application. For example, an applicant for an international section 214 authorization would not be required to provide information about cable landing location sites. We also seek comment on whether there is information that the Executive Branch may require that cannot be provided when an application is filed, but which could be made available later in the review process. For example, Level 3 notes that submarine cable landing applicants usually cannot provide answers to all the questions at the time the application is filed. Should an application be considered complete and acceptable for filing if there is information that an applicant cannot provide at the time of filing? Are there specific questions for submarine cable applicants or other applicants that should not be required at the time the applicant files?

19. FCC Review of Responses. We propose that, as part of our review of an

application for acceptability for filing, the Commission staff review the responses to the threshold questions for completeness, but leave the substantive review to the Executive Branch. CTIA and Level 3 question the usefulness of submitting the answers to the Commission and suggest that they be sent directly to the Executive Branch. We seek comment on whether the Commission should receive and/or review the answers in the first instance. We seek comment on what Commission staff should look for to determine if the responses are sufficient to find the application acceptable for filing. We also seek comment on alternatives if Commission staff does not review the responses to the questions. For example, should we require a certification that the applicant has provided the responses to the Executive Branch at the time of filing or will do so within a specified period of time? If so, what would be an appropriate period? If the Commission staff does not review the responses, how would that affect the proposed time frames for Executive Branch review? When would the 90-day period for the review start if the Executive Branch has to go back and forth with the applicant to get complete responses to the questions?

20. We recognize that the responses to some of these threshold questions may contain confidential commercial information. Some of the threshold questions would seek personally identifiable information (PII). Any questions that seek PII would require the Commission to assess whether by obtaining and using such PII it would be creating a system of records under the Privacy Act, 5 U.S.C. 552a. With respect to any information we may receive that includes PII, we intend to comply fully with the requirements of that statute and related statutes that protect PII. The Commission's rules provide a mechanism for requesting confidential treatment of such information. Under these rules, such information will be accorded confidential treatment until the Commission acts on the confidentiality request and all subsequent agency review and

judicial stay proceedings have been exhausted. To the extent the information qualifies as trade secrets or confidential commercial or financial information that is exempt from disclosure under the Freedom of Information Act, our rules require a “persuasive showing” for public release of the information, showing among other factors that the information is relevant to a public interest issue before the Commission. In application proceedings, the Commission may rely upon protective orders to limit disclosure and use of competitively sensitive and other confidential information. We seek comment on whether these established procedures serve to provide appropriate protections in such situations. Given the scope of this information, the likelihood that some of it may already be public, and the relevance of context in evaluating competitive concerns, we do not propose to designate such information in our rules as the kind that is presumed confidential and therefore does not require the filing of a request for confidentiality. We seek comment on this view. We seek comment on whether some of this information can be presumed to be confidential and request that commenters specify which types of information should be presumed confidential.

21. If we require the responses to the questions to be filed with the Commission, we seek comment on whether the Commission should take special steps to ensure that the responses to threshold questions submitted by applicants are secure, such as having applicants submit their responses through a secure portal. We note that the Commission has experience in receiving confidential information and sharing that information with other agencies. Currently, the Commission has in place secure portals, such as the Network Outage Reporting System (NORS). We would anticipate developing a similar system to facilitate the receiving, reviewing, sharing, and generally storing any confidential or sensitive information in the applicants’ submissions in response to the threshold questions. We also invite suggestions about other heightened security

measures that the Commission can undertake to ensure the protection of the information submitted by applicants.

22. In this case, our proposals contemplate sharing of confidential information submitted as part of the application with Executive Branch agencies, who would continue to review it in the first instance for national security, law enforcement, foreign policy, and trade policy concerns. Under our rules, such sharing is subject to the requirement that the Executive Branch agencies must comply with the protections applicable both to the Commission and to themselves relating to the unlawful disclosure of information. Because current practice already involves submission of similar information for review by these agencies, and in light of their legitimate need for the information, we propose to amend section 0.442 of the Commission's rules to make clear that sharing with Executive Branch agencies under these restrictions is permissible without the pre-notification procedures of that rule. We seek comment on this proposal. Are the obligations of the various Executive Branch agencies different than the Commission's obligation to protect the information? If so, what are the differences and what is the possible impact of those differences?

23. We seek comment on whether there are reasons why the Commission should or should not undertake the initial review of the answers for completeness. We seek comment on whether there are concerns with Commission staff receiving, reviewing, storing, and forwarding to the Executive Branch such personally identifiable and business sensitive information. What are the benefits and burdens of the Commission receiving and reviewing the threshold questions? We invite suggestions on heightened confidentiality protections for sensitive and proprietary financial, operational, and privacy related information that applicants would provide as part of the Commission's application process.

24. **CERTIFICATION REQUIREMENTS.** We propose to add a certification requirement to our rules, and seek comment on the scope of this proposal. The Executive Branch requests that the Commission require all applicants to certify that they agree to comply with several mitigation measures, as discussed below. The NTIA Letter states that requiring an applicant to certify to compliance with these measures as part of its application should reduce the need for routine mitigation, which should facilitate a faster response to the Commission by the Executive Branch on its review and advance the shared goal of making the Executive Branch review process as expeditious and efficient as possible.

25. The NTIA Letter observes that national security and law enforcement review frequently requires time both to negotiate assurances from an applicant that it will comply with applicable law enforcement assistance requirements and to draft an individualized LOA upon which the Executive Branch will rely to address national security and law enforcement concerns. It states that the proposed certification would simplify and expedite the review process. The Executive Branch therefore requests that an applicant certify that, with respect to the communications services to be provided under the requested license or authorization, it will:

- (1) comply with applicable provisions of the Communications Assistance for Law Enforcement Act (CALEA);
- (2) make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to lawful request or valid legal process under U.S. law, for services covered under the requested Commission license or authorization; and
- (3) agree to designate a point of contact located in the United States who is a U.S. citizen or lawful permanent resident for the execution of lawful requests and/or legal process.

For certification number (2), the proposed certifications cite to the following U.S. laws and other legal processes: (1) The Wiretap Act, 18 U.S.C. section 2501 *et seq.*; (2) the Stored Communication Act, 18 U.S.C. section 2701 *et seq.*; (3) the Pen Register and Trap and Trace Statute, 18 U.S.C. section 3121; and (4) other court orders, subpoenas or other legal process. The Executive Branch suggests that by requiring applicants to certify compliance with these law enforcement requirements as part of the application process, the applicant would consider and address these requirements prior to submitting the application. The NTIA Letter states that the requested certifications “would continue to require applicants to declare that all information submitted is complete, up-to-date, and truthful, and that the applicant understands that failure to fulfill the obligations contained in the certifications could result in revocation or termination of the requested license or authorization, as well as criminal and civil penalties.” It asserts that these certifications would strengthen compliance because an applicant would understand that failure to comply with the certifications could be a basis for the Commission to terminate or revoke the authorization or license. We invite comment on the certifications above and seek specific comments as to whether any changes should be made and why. We also seek comment on whether the Executive Branch’s suggestions will be burdensome, and if so, the nature and extent, of any burden.

26. Eliminating the Need to Negotiate LOAs. We believe that eliminating the need to negotiate LOAs for routine mitigation measures should help to streamline the Executive Branch review process and provide the opportunity to allocate resources to resolution of more complicated applications. Our experience shows that in 2014 almost half (13 of 29) of all mitigation agreements filed with the Commission concerned only issues that would have been adequately addressed by the certification requirement; in 2015, the figure was over half (17 of

29). We encourage those who have had experience in negotiating routine LOAs that cover compliance with CALEA and other law enforcement assistance requirements to address whether and in what ways and by how much time the proposed certifications might have expedited Executive Branch review of their applications.

27. Applicants. We seek comment on the Executive Branch request that all applicants seeking an international section 214 authorization or a submarine cable landing license, or applications to assign or transfer control of such authorizations, and petitioners for section 310(b) foreign ownership rulings (common carrier wireless, common carrier satellite earth stations or broadcast) be required to make the foregoing certifications, not just those applicants with reportable foreign ownership. Specifically, we seek comment on the premise that the certification requirement would address legitimate law enforcement concerns that should apply regardless of foreign ownership. We note that extension of this requirement to all applicants would encompass the vast majority of such applications, including many that do not require Executive Branch review. Several commenters oppose requiring applicants that do not have reportable foreign ownership to make the requested certification. For example, CTIA argues that the NTIA letter “does not explain why [the proposed] certifications should be extended to all applicants” when the Executive Branch review process is currently limited to applicants with reportable foreign ownership. In addition, T-Mobile claims that “[t]here is no basis to require applicants without cognizable foreign ownership to submit to these new requirements.” Moreover, USTelecom contends that applicants should not have to “submit up front information or certifications if their applications have no meaningful nexus to national security, law enforcement, foreign policy, or trade concerns,” which are the main reasons behind the Executive Branch review. We seek comment on their concerns. Are there reasons why the

certification should apply only to applicants with reportable foreign ownership? How would requiring certifications from all applicants expedite the review of applications with reportable foreign ownership? Would distinguishing between applicants with reportable foreign ownership and those without foreign ownership raise concerns with any U.S. treaty obligations, such as the non-discrimination/national treatment obligations common to U.S. free trade agreements? We invite comments on whether the benefits of the certifications outweigh the burdens related to compliance with the requirement.

28. Extent of Current Laws and Obligations. We seek comment on whether, and in what ways, the proposed certifications might add any new requirements beyond those set out in the applicable statutes and rules. The NTIA Letter states that the requested certification essentially reflects current laws and obligations. Several commenters disagree, arguing that the certifications go beyond the existing obligations of carriers under current statute and rules. For example, CTIA contends that the second proposed certification could be interpreted as requiring carriers to “take steps beyond what is currently required to assist with breaking security measures on customers’ accounts and devices.” In particular, T-Mobile and Wiley Rein are concerned that the certification is broad enough to be read as prohibiting encryption, establishing duties to decrypt, and requiring disclosure to government agencies that is not legally compelled. T-Mobile further contends that the “certification language also appears to be trying to improperly enforce localization and repatriation in the United States,” running contrary to the Commerce Department’s policy of favoring the “free flow of information.” USTelecom ultimately finds that some certifications such as the second certification are “subject to differing legal interpretation and potential legal challenge,” making their “validity and wisdom . . . unclear.” We seek comment on these concerns as well as alternatives to the second certification offered by

these parties, such as T-Mobile's proposal that it should be limited to compliance with obligations otherwise established in statute or regulation. We also seek comment on whether there are conflicts between U.S. law and other laws applicable to communications made to or from other countries or records associated therewith, and if so how should applicants resolve any such conflicts? Would the proposed certifications raise foreign policy or other concerns regarding potential reciprocal demands by foreign regulatory authorities on U.S. entities? Would this burden vary by the type of license or authorization to which the certification applies? What experience have prior applicants had with any similar provisions under existing LOAs or NSAs?

29. We also seek comment on whether the certifications regarding compliance with CALEA and making communications within the United States as well as records thereof available in a form and location that permits them to be subject to lawful request or valid legal process under U.S. law, should be applied to all applicants or only applied to certain applicants. We also seek comment on whether the certifications regarding compliance with CALEA and making communications within the United States, as well as records thereof, available in a form and location that permits them to be subject to lawful request or valid legal process under U.S. law should be applied more narrowly than proposed in the NTIA Letter. Should they only apply to common carrier licensees? For example, the Broadcaster Representatives argue that the CALEA compliance and intercept capabilities have nothing to do with broadcasting, or with broadcast licensees or applicants that file a petition for a foreign ownership ruling under section 310(b). The Broadcaster Representatives state that broadcasters "do not have compliance obligations" under CALEA and recommend the Commission consider differentiating the requirements in the broadcast context. We seek comment on considerations of the scope and implications of the certifications proposal.

30. **TIME FRAMES FOR EXECUTIVE BRANCH REVIEW.** We propose to adopt a 90-day period for the Executive Branch to complete its review of referred applications and petitions. In rare instances, we propose to allow a one-time additional 90-day extension provided the Executive Branch demonstrates that issues of complexity warrant such an extension and provides to the Commission the status of its review every 30 days thereafter. We also propose that the time period would start from the date the application is placed on the Commission's acceptable for filing public notice. We believe that time frames will bring additional clarity and certainty to the review process. Such transparency would benefit the Commission and applicants alike, by keeping all parties better informed of the application's status and facilitating expectations for resolution of pending cases. Several commenters agree, stating that time frames (including a 90-day period) should be established for Executive Branch review in order to promote transparency and certainty of action. Because these time frames will affect multiple types of applications with requirements that are set out in different parts of the Commission's rules, we propose to establish a new subpart U in Part 1 of the rules for referral of applications to the Executive Branch.

31. Acceptability for Filing. Under our proposal, Commission staff will review the application to ensure it is acceptable for filing. If the threshold questions have been answered, the certification is complete, and the application otherwise complies with our rules, the Commission proposes to place the application on public notice, with appropriate protections, and forward the application, including the answers to the threshold questions, to the Executive Branch. In instances where the Commission finds that any of the threshold questions have not been answered or the certification is incomplete, we propose that the Commission notify the applicants and give them a reasonable time to respond. We seek comment on what a reasonable

time frame should be (such as, for example, seven days). Failure to respond within the time frame will be grounds for dismissal of the application without prejudice to refiling. We seek comment on this proposal and any other recommendations on the process to ensure transparency to the public and applicants and to promote an efficient review process. One commenter suggested that to enhance transparency, applicants should have names and contact information of the individuals in the Executive Branch who are reviewing their applications. We seek comment regarding whether the Executive Branch agencies should identify a single point of contact or point agency for referral of applications and any inquiries the Commission or applicants have during the course of the Executive Branch review process for any given application. In the alternative, we seek comment on whether each participating agency should identify its own point of contact. If obtained, we propose to provide Executive Branch contact information on our website along with the standardized national security and law enforcement questions. We seek comment on this proposal.

32. Non-Streamlined Processing. We propose to process on a non-streamlined basis international section 214 and submarine cables applications with foreign ownership that are referred to the Executive Branch for review. Streamlined processing of an international section 214 application means that the application is granted on the 14th day after the application is placed on public notice. Based on our experience, the Executive Branch needs time to review an application and streamlined processing, particularly a 14-day process, does not provide sufficient time for such a review. The Commission previously has made such a determination in the context of submarine cable landing licenses, where it found that a 14-day review period was insufficient due to the need to coordinate such licenses with the State Department. Moreover, the Executive Branch regularly requests that we remove applications from streamlined

processing as it cannot complete its review in that short of a time period. We believe it would be beneficial to the applicant, the Commission, and the Executive Branch agencies to process the applications as non-streamlined from the beginning rather than to initially process the application on a streamlined basis and then remove it from streamlining. This should provide more transparency as to the process for those applications referred to the Executive Branch for review. We seek comment on this proposal and seek suggestions on alternative changes to our processing of applications. We propose to remove from streamlining any transactions involving joint domestic and international section 214 authority where foreign ownership of the international 214 authorization alone would be cause for non-streamlined processing. In such cases, we see no reason to streamline one part of the transaction (domestic 214 authority) while another part (international 214 authority) is not streamlined. We seek comment on these proposals and seek suggestions on alternative changes to our processing of applications.

33. 90-Day and 180-Day Time Frames for Executive Branch Review. We propose a 90-day review period for applications referred to the Executive Branch, with a one-time additional 90-day extension for circumstances where the Executive Branch requires additional review time beyond the initial period. Many of the commenters support a 90-day review period. We expect that many of the referred applications will be processed within the initial comment period because the certification requirement should obviate the need for negotiating LOAs related to compliance with routine law enforcement requirements. We will refer applications with reportable foreign ownership to the Executive Branch upon release of the public notice, and we propose that, at that time, the 90-day clock would begin. Currently, only applications concerning international section 214 authorizations – either initial applications for authority or applications for assignment or transfer of authority – that qualify for streamlined processing

pursuant section 63.12 are referred to the Executive Branch prior to the application being placed on public notice. 47 CFR 63.12. In those cases, the applications have been referred to the Executive Branch generally a week prior to release of the public notice, and the Executive Branch is requested to notify the Commission prior to the automatic grant of the application if it wishes to review the application. Commenters support starting the clock when the application either is referred to the Executive Branch or placed on an accepted for filing public notice.

34. In keeping with current practice, we propose to continue to request that the Executive Branch notify us within the comment period established by the public notice if it will require additional time to review the application (i.e., beyond the comment period established by the public notice). Any request to defer Commission action beyond the public notice period pending national security, law enforcement, foreign policy, and trade policy review would be filed in the public record for the application. If the Executive Branch asks us to defer action on an application beyond the public comment period for the application, we propose a timetable for completing its review within 90 days of the release of the accepted-for-filing public notice. Should the Executive Branch complete review prior to the end of the 90-day period, we propose that it should notify the Commission at the time the review is complete. If the Executive Branch does not notify the Commission within the 90-day period that it is requesting additional time to review the application, we propose to deem that it has not found any national security, law enforcement, foreign policy, or trade policy issues present, and we will move ahead with Commission action on the application. Commenters agree with this approach. We seek comment on this proposal and on any alternative proposals for processing such applications.

35. A 90-day period is consistent with the existing timelines for action on non-streamlined international 214 and cable landing license applications. Moreover, a 90-day review

period is consistent with review periods used by other agencies as well. For example, CFIUS conducts national security reviews of mergers, acquisitions, and takeovers by, or with, any foreign person that could result in foreign control of a U.S. business (a “covered transaction”) under a similar time frame. After an organization submits notice of a transaction to the Committee, CFIUS has up to 90 days to complete its review of the transaction.

36. We recognize that, in some unusual cases, the Executive Branch may need more than 90 days to investigate and/or resolve any national security, law enforcement, foreign policy, or trade policy issues. Allowing the Executive Branch up to an additional 90 days (i.e., 180 days total from the date of public notice and referral) for review would be consistent with our rules regarding international section 214 and cable landing license applications that provide the Commission an additional 90 days’ review in cases of extraordinary complexity.

37. Under our proposal, the Executive Branch would complete its review within the 90-day period or notify the Commission no later than the initial 90-day date that it requires additional time for review and, every 30 days thereafter, would notify the Commission on the status of review. We propose that the notification would explain why the Executive Branch requires additional time to complete review, along with an estimate of the additional time required. We invite comment on factors that would provide a basis for an extension. If the explanation includes classified or other information that should not be made public, the agencies would have the ability to file a short statement in the public record, and provide a more thorough explanation to Commission staff in a non-public record.

38. We seek comment on the proposed 90-day and 180-day time periods. Are these appropriate? Should they apply to all the applications that are referred to the Executive Branch or should there be different time periods for different types of applications? If different periods

should be adopted, what would be the rationale for such a distinction and what would be an appropriate period?

39. Follow-Up Questions. As discussed above, the period for Executive Branch review would begin when the application goes on public notice and is referred to the Executive Branch. After receiving an applicant's answers to the threshold questions, there may be situations, as there are under the current process, when the agencies will need to seek additional information or clarification from the applicant to conduct their national security, law enforcement, foreign policy, and trade policy review. As is the current practice, we propose that the agencies engage directly with the applicant regarding any follow-up information requests, and that the applicant send its answers to the follow-up requests directly and solely to the agencies, but that the Commission could request copies of such answers in its discretion. To ensure that the time frames for Executive Branch review can be maintained, we propose that the applicant be required to respond to the agencies' requests for information within seven days. If the applicant does not provide the requested information on time, we propose that the Commission have the discretion to dismiss the application without prejudice. We propose that the Executive Branch would need to notify the Commission when an applicant fails to provide supplemental information within seven days. The applicant would have the option of asking for additional time to respond, but that would stop the 90-day review clock until the applicant provides the requested information. We propose that a request for additional time to provide supplemental information be submitted by the applicant directly to the Executive Branch with a copy submitted to the Commission.

40. We also propose to place similar requirements on the applicant to be responsive to requests by the agencies to negotiate mitigation, a process which we expect to occur within the

90-day review period following referral of an application, as discussed in the paragraphs above. Thus, under this proposed approach, an applicant would have seven days after receiving a draft mitigation agreement to respond to it (either by signing it or offering a counter-proposal). If an applicant desires more than seven days to respond to the draft mitigation agreement, it must submit an extension request directly to the Executive Branch. The 90-day clock would stop for the duration of the extension, just as it would stop for extensions to respond to follow-up questions. Negotiation of the mitigation agreement could involve several rounds of seven-day review periods (or longer if extensions are sought) if multiple drafts and counter-proposals are exchanged. Failure of an applicant to respond within the seven days or any approved extension period would result in dismissal of the application, without prejudice. We seek comment on these proposals. In particular, we request comment on whether seven days is sufficient time to respond to follow-up questions, and what impact allowing a longer period would have on the 90-day period for Executive Branch review.

41. **CATEGORIES OF REFERRALS.** Although we propose to continue to refer certain applications to the Executive Branch agencies, we seek comment on whether there are categories of applications with foreign ownership that the Commission should generally not refer to the Executive Branch. For example, currently the Commission does not refer a pro forma notification because by definition there is no change in the ultimate control of the licensee. Under section 63.24(f), carriers may submit post-transaction notifications for non-substantial, or pro forma, transfers and assignments in which no change in the actual controlling party occurs. 47 CFR 63.24(f). Thus, for example, where the owner maintains de facto control of the carrier, less than 50 percent of the carrier's voting interests changes hands, and no new party gains negative or de jure control as a result of the transaction or series of transactions, the transaction

would constitute a pro forma transfer of control. See Amendment of Parts 1 and 63 of the Commission's Rules, IB Docket No. 04-47, Report and Order, 22 FCC Rcd 11398, 11411, para. 36 (2007). Under section 63.24(f), the carrier can notify the Commission of the transaction after the transfer is completed. Several commenters support exclusion of pro forma notifications from the referral process. TelePacific asserts that applications for transactions that involve resellers with no facilities should not be referred to the Executive Branch. If the Commission adopted this position, how would the Commission know that no facilities are being assigned/transferred in the proposed transaction? Are there other categories of applications that the Commission should generally not refer to the Executive Branch, such as when the applicant has an existing LOA or NSA and there has been no change in the foreign ownership since the Executive Branch and applicant negotiated the relevant LOA or NSA? We also seek comment on whether the Commission might review and not refer to the Executive Branch certain categories of applications. How would this process work and which categories of applications might be included? Would internal Commission review for national security and law enforcement concerns serve to expedite the processing of applications?

42. **OTHER CHANGES TO THE APPLICATION PROCESS.** We also propose other revisions to the application process to streamline the review process. First, we propose to amend our rules to clarify that applicants for international section 214 authorizations, assignments or transfers of control of domestic or international section 214 authority, and applications for submarine cable landing licenses or to assign or transfer control of such licenses must include in their applications the voting interests, in addition to the equity interests, of individuals or entities with ten percent or greater direct or indirect ownership in the applicant. Second, we propose to require these applicants to include in their applications a diagram of the

applicant's ownership, showing the ten percent or greater direct or indirect ownership interests in the applicant. We believe that these two rule revisions will facilitate faster review of applications by Commission staff.

43. The current rules require applicants to provide the name, address, citizenship, and principal businesses of any individual or entity that owns directly or indirectly at least ten percent of the equity of the applicant. These rules originated when equity and voting ownership were usually the same. Today, applicants often have multiple classes of ownership and equity interests that differ from the voting interests. It is important for the Commission to know for potential control purposes who has voting interests in the applicant. The Commission has recognized this in other rules, where it requires an applicant to provide both equity and voting interests in an applicant. Although most applicants provide the voting information in their international section 214 and submarine cable license applications, others do not. If the filing does not provide information about the voting interests, either by providing separate equity and voting share information or noting that the voting interests track the equity interests, it is the practice of Commission staff to contact applicants and request the information. Having to request this information delays review of the application. We seek comment on this proposal to include applicant's applicable voting interests.

44. We also believe that inclusion of a diagram showing the ten-percent-or-greater interests in the applicant can help speed the processing of an application. Many applicants have complex ownership structures, particularly those with private equity ownership. A diagram can help distill a lengthy description of an ownership structure and make it more easily understood. The Commission has found this especially helpful in the context of foreign ownership petitions and recently included such a requirement in the rules regarding the contents of a request for

declaratory ruling under section 310(b) of the Act. While many applicants already provide ownership diagrams in their applications, Commission staff often request such a diagram from an applicant after the application has been filed. We believe that requiring the application to include the diagram would impose a minimal burden on applicants which would be offset by the Commission staff's ability to process applications more expeditiously. We seek comment on this proposal.

45. Finally, we propose a clean-up edit to the cable landing license rules. In 2014, the Commission removed the effective competitive opportunities test for cable landing licenses. The Commission at that time failed to amend the reporting requirement for licensees affiliated with a carrier with market power in a cable's destination market to remove the limitation that it apply only to destination markets in World Trade Organization (WTO) Member countries. We propose to remove that limitation and apply the reporting requirements to licensees affiliated with a carrier with market power in a cable's destination market for all countries, whether or not they are a WTO Member. We seek comment on this proposal.

46. **CONCLUSION.** The Commission seeks to streamline and to bring more transparency to the Executive Branch referral process while continuing to give consideration to relevant national security, law enforcement, foreign policy, and trade policy concerns. We seek comment on the proposals we make to implement the suggestions submitted by the Executive Branch. We also seek comment on establishing appropriate time frames for Executive Branch review of an application with reportable foreign ownership and other changes to our processing rules. We tentatively conclude that implementation of these proposals would provide for more timely and transparent review while ensuring that relevant national security, law enforcement, foreign policy, and trade policy concerns receive consideration.

Paperwork Reduction Act

47. This document contains new and modified information collection requirements.

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Initial Regulatory Flexibility Act Analysis

48. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). We request written public comments on this IRFA. Commenters must identify their comments as responses to the IRFA and must file the comments by the deadlines

provided in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.

49. This NPRM seeks comment on the proposed changes to our rules and procedures related to the review of certain applications and petitions for declaratory ruling involving foreign ownership by the Executive Branch agencies. The Commission's objective is to improve the timeliness and transparency of the Executive Branch review process. Industry has expressed concern about the uncertainty and lengthy review times that make it difficult to put a business plan in place. In response, the Executive Branch agencies filed a letter requesting the Commission make changes to its processes that would help facilitate a more streamlined review. The proposed rules seek to remedy the uncertainty and time frame for review.

50. The NPRM proposes several changes to our rules. Specifically, it proposes to:

1. Standardize the threshold questions that the national security and law enforcement agencies routinely ask applicants with foreign ownership and require applicants to provide the information as part of the application process. The NPRM proposes to collect information on: corporate structure and shareholder information; relationship with foreign entities; financial condition and circumstances; compliance with applicable laws and regulations; and business and operational information, including services to be provided and network infrastructure. The specific questions would be adopted through the Paperwork Reduction Act (PRA) process and would be publicly available on a website, as a downloadable document, so it is readily available to applicants prior to filing its application. This proposal would help provide transparency and expedite the review process.

2. Include in the rules a requirement that applicants certify that they will comply with routine mitigation measures. The Executive Branch agencies state that the proposed certification requirement reflects current laws and obligations applicable to applicants, but ensures that the applicants focus on those laws and obligations at the beginning of the application process. This would also help reduce the number of individualized Letters of Assurances that the Executive Branch agencies would need to negotiate, thus expediting response to the Commission.
3. Include applicable time frames for the Executive Branch agencies to complete its review of FCC applications. A 90-day clock is proposed upon referral of an application to the agencies, with an additional one-time 90 day extension in rare circumstances. Under the proposed rules, the Executive Branch would complete its review within the 90-day period or notify the Commission no later than the initial 90-day date that it requires additional time for review and, every 30 days thereafter, would notify the Commission on the status of review. The notification would explain why the Executive Branch requires additional time to complete review, along with an estimate of the additional time required. This proposal will help improve the timeliness of review and allow agencies time to review for national security, law enforcement, foreign policy, or trade policy concerns.

51. The proposed action is authorized under sections 4(i), 4(j), 214, 303, 309, 310 and 413 of the Communications Act as amended, 47 U.S.C. 154(i), 154(j), 214, 303, 309, 310 and 413, and the Cable Landing License Act of 1921, 47 U.S.C. 34 through 39, and Executive Order No. 10530, section 5(a) reprinted as amended in 3 U.S.C. 301.

52. The RFA directs agencies to provide a description of, and, where feasible, an

estimate of, the number of small entities that may be affected by the rules adopted herein.

Below, we describe and estimate the number of small entity applicants that may be affected by the adopted rules.

1. Wired Telecommunications Carriers.
2. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.
3. Interexchange Carriers (IXCs).
4. Prepaid Calling Card Providers.
5. Local Resellers.
6. Toll Resellers.
7. Other Toll Carriers.
8. Wireless Telecommunications Carriers (except Satellite).
9. All Other Telecommunications.
10. Satellite Telecommunications and All Other Telecommunications.
11. Radio Broadcasting.

53. The NPRM proposes a number of rule changes that would affect reporting, recordkeeping and other compliance requirements for applicants who file international section 214 authorizations, submarine cable landing licenses or applications to assign or transfer control of such authorizations, and section 310 rulings (common carrier wireless, common carrier satellite earth stations or broadcast) (applicants). The proposed threshold questions request

information already routinely asked by the Executive Branch agencies after filing the application but the proposed rules will require applicants with reportable foreign ownership to submit answers to the threshold questions at the time of filing their FCC application. Information requested will be on: corporate structure and shareholder information; relationship with foreign entities; financial condition and circumstances; compliance with applicable laws and regulations; and business and operational information, including services to be provided and network infrastructure. Applicants would have a time frame by when they need to respond to any follow-up questions relevant to the application. Applicants would also be required to certify that they will comply with the Communications Assistance to Law Enforcement (CALEA); will make communications to, from, or within United States, as well as records thereof, available in a form and location that permits them to be subject to a valid and lawful request or legal process in accordance with U.S. law; certify that applicants would designate a point of contact in the U.S. that is a U.S. citizen or lawful permanent resident; certify that all information at time of submission is accurate and notify when information submitted is no longer accurate; and if an applicant fails to fulfill obligations contained in certifications they will be subject to all remedies available to the United States Government.

54. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for

such small entities.”

55. In this NPRM, the proposed changes for Executive Branch’s review of FCC applications involving foreign ownership would help improve the timeliness and transparency of the review process, thus lessening the burden of the licensing process on all applicants, including small entities. The threshold questions would be publicly available, thus providing transparency and helping expedite Executive Branch’s review. The proposed certifications will help reduce the need for routine mitigation, which should facilitate a faster response by the Executive Branch on its review and advance the shared goal of making the Executive Branch review process as efficient as possible. Time frames for review of FCC applications referred to the Executive Branch have also been proposed, which will help prevent unnecessary delays and make the process more efficient and transparent, which ultimately benefits all applicants, including small entities.

56. The NPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the NPRM.

57. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

58. Our proposed rules require applicants to certify that they will comply with federal rules related to assistance to law enforcement. Some of the federal rules that may duplicate with our proposed rules are:

1. Communications Assistance to Law Enforcement Act. 47 U.S.C. 1001 through 10.
2. Wiretap Act. 18 U.S.C. 2510 et seq.
3. Stored Communications Act. 18 U.S.C. 2701 et seq.
4. Pen Register and Trap and Trace Statute. 18 U.S.C. 3121 et seq.

List of Subjects in

47 CFR Part 0

Classified information, Privacy.

47 CFR Part 1

Administrative practice and procedure, Communications common carriers,
Telecommunications.

47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer,

Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 0, 1, and 63 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Amend §0.442 by revising paragraph (d)(3) to read as follows:

§0.442 Disclosure to other Federal government agencies of information submitted to the Commission in confidence.

* * * * *

(d) * * *

(3) A party who furnished records to the Commission in confidence will not be afforded prior notice when the disclosure is made to the Comptroller General of the United States, in the Government Accountability Office. Such a party will instead be notified of disclosure of the records to the Comptroller General either individually or by public notice. No prior notice will be afforded where records have been furnished to the Commission in confidence and shared with the Executive Branch pursuant to § 1.6001 of this chapter.

* * * * *

PART 1 – PRACTICE AND PROCEDURE

The authority citation for part 1 is revised to read as follows:

Authority: 15 U.S.C. 79, et seq.; 47 U.S.C. 34 through 39, 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

- 3. Amend §1.767 by revising paragraphs (a)(8)(i), (a)(11)(i), and (j), and by adding paragraph (k)(5) and revising paragraph (l) introductory text to read as follows:**

§1.767 Cable landing licenses.

(a) * * *

(8) * * *

(i) The place of organization and the information and certifications required in § 63.18 paragraphs (h), (o), (p) and (q) of this chapter.

* * * * *

(11)(i) If applying for authority to assign or transfer control of an interest in a cable system, the applicant shall complete paragraphs (a)(1) through (a)(3) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (a)(8) through (a)(9) of this section. The applicant shall provide the ownership diagram required under paragraph (a)(8)(i) of this section and include both the pre-transaction and post-transaction ownership of the licensee. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The application shall also specify, on a segment specific basis, the percentage of voting and ownership interests being transferred or assigned in the cable

system, including in a U.S. cable landing station. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

* * * * *

(j) On the date of filing with the Commission, the applicant shall also send a complete copy of the application, or any major amendments or other material filings regarding the application, to: U.S. Coordinator, EB/CIP, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520-5818; Office of Chief Counsel/NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230; and Defense Information Systems Agency, ATTN: GC/DO1, 6910 Cooper Avenue, Fort Meade, MD 20755-7088, and shall certify such service on a service list attached to the application or other filing.

(k) * * *

(5) Certifying that all ten percent or greater direct or indirect equity and/or voting interests in the applicant are U.S. citizens or entities organized in the United States.

* * * * *

(l) Reporting Requirements Applicable to Licensees Affiliated with a Carrier with Market Power in a Cable's Destination Market. Any licensee that is, or is affiliated with, a carrier with market power in any of the cable's destination countries must comply with the following requirements:

* * * * *

4. Amend § 1.991 by adding paragraphs (l) and (m) to read as follows:

§1.991 Contents of petitions for declaratory ruling under the Communications Act of 1934.

* * * * *

(l) Each petitioner subject to a referral to the Executive Branch pursuant to § 1.6001 must file the national security and law enforcement information. The information will include:

(1) Corporate structure and shareholder information;

(2) Relationships with foreign entities;

(3) Financial condition and circumstances;

(4) Compliance with applicable laws and regulations; and

(5) Business and operational information, including services to be provided and network infrastructure. The instructions for submitting the information to be filed are available on the FCC website. The required information shall be submitted separately from the petition and shall be filed via an FCC website.

(m) Each petitioner shall make the following certifications:

(1) To comply with all applicable Communications Assistance to Law Enforcement Act (CALEA) requirements and related rules and regulations, including any and all FCC orders and opinions governing the application of CALEA and assistance to law enforcement (see, e.g., the Commission's orders in conjunction with ET Docket No. 04-295, Communications Assistance for Law Enforcement Act and Broadband Access and

Services and the Commission's rules and regulations in part 1, subpart Z—

Communications Assistance for Law Enforcement Act);

(2) To make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to a valid and lawful request or legal process in accordance with U.S. law;

(3) To designate a point of contact located in the United States and who is a U.S. citizen or lawful permanent resident, for the service of the requests and/or valid legal process described in paragraph (m)(2) of this section and the receipt of other communications from the U.S. government;

(4) That all information submitted, whether at the time of submission of the petition or subsequently in response to either Commission or Executive Branch agency request, is substantially accurate and complete in all significant respects to the best of petitioner's knowledge at the time of the submission. While the petition is pending, as defined in § 1.65(a), the petitioner agrees to promptly inform the Commission and, if the petitioner originally submitted the information in response to the request of another Executive Branch agency, that agency, if the information in the application is no longer substantially accurate and complete in all significant respects; and

(5) That the petitioner understands that if the applicant fails to fulfill any of the conditions to the grant of its petition and/or the information provided to the United States Government is materially false, fictitious, or fraudulent, the petitioner may be subject to all remedies available to the United States Government, including but not

limited to revocation or termination of the applicant's Commission authorization, and criminal and civil penalties, including penalties under 18 U.S.C. 1001.

5. Add Subpart U to part 1 to read as follows:

Subpart U – Review of Applications, Petitions, and Other Filings With Foreign Ownership By Executive Branch Agencies on National Security, Law Enforcement, Foreign Policy, and Trade Policy Concerns

Sec.

1.6001 Executive Branch review of applications, petitions, and other filings with foreign ownership

1.6002 Referral of applications, petitions, and other filings with foreign ownership to the Executive Branch agencies for review

1.6003 Time frames for Executive Branch review of applications, petitions, and other filings with foreign ownership

§ 1.6001 Executive Branch review of applications, petitions, and other filings with foreign ownership

(a) The Commission, in its discretion, may refer applications, petitions, and other filings with foreign ownership to the Executive Branch for review for national security, law enforcement, foreign policy, and trade policy concerns.

(b) The Commission will consider any recommendations from the Executive Branch regarding whether a pending matter affects national security, law enforcement, foreign policy

and/or trade policy as part of its public interest analysis. The Commission will make an independent decision and will evaluate concerns raised by the Executive Branch in light of all the issues raised in the context of a particular application, petition, or other filing.

§ 1.6002 Referral of applications, petitions, and other filings with foreign ownership to the Executive Branch agencies for review

(a) The Commission shall refer any applications, petitions, or other filings for which it determines to seek Executive Branch review at the time such application, petition, or other filing is placed on an accepted for filing public notice.

(b) If the Executive Branch does not otherwise notify the Commission by filing in the record for the application, petition, or other filing within the comment period established by the public notice, the Commission will deem that the Executive Branch does not have any national security, law enforcement, foreign policy, and trade policy concerns with the application, petition, or other filing and will act on the application, petition, or other filing as appropriate based on its determination of the public interest.

§ 1.6003 Time frames for Executive Branch review of applications, petitions, and other filings with foreign ownership

If the Executive Branch notifies the Commission that it needs additional time for its review of the application, petition, or other filing referred in accordance with § 1.6002(b):

(a) The Executive Branch shall notify the Commission by filing in the record for the application, petition, or other filing no later than 90 days from the date of public notice for the application, petition, or other filing whether it:

(1) Has national security, law enforcement, foreign policy, and trade policy concerns with the application, petition or other filing;

(2) Has no concerns;

(3) Has no concerns provided that the grant of the application, petition or other filing is conditioned; or

(4) Needs additional time to review the application, petition, or other filing.

(b) In cases of extraordinary complexity, when the Executive Branch notifies the Commission that it needs more than the 90-day period for review of the application, petition, or other filing under paragraph (a) of this section, the Executive Branch may request a one-time 90-day extension to review the application, petition, or other filing, provided that it:

(1) Explains why it was unable to complete its review within the initial 90-day review period and;

(2) Provides the Commission with updates on the status of its review every 30 days (at the 120-day and 150-day dates after release of the public notice). The Executive Branch must notify the Commission by filing in the record for the application, petition, or other filing no later than 180 days from the date of public notice for the application, petition or other filing whether it:

(i) Has national security, law enforcement, foreign policy, and trade policy concerns with the application, petition, or other filing;

(ii) Has no concerns; or

(iii) Has no concerns if the grant of the application, petition, or other filing is conditioned.

(c)(1) The Executive Branch shall file its notifications as to the status of its review in the public record for the application, petition, or other filing.

(2) In circumstances where the notification of the Executive Branch contains nonpublic information, the Executive Branch shall file a public version of the notification in the public record for the application, petition, or other filing and shall file the nonpublic information with the Commission pursuant to § 0.457 of this chapter.

**PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE,
REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON
CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY
STATUS**

6. The authority citation for part 63 continues to read as follows:

**Authority: Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the
Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201 through
205, 214, 218, 403, and 571, unless otherwise noted.**

7. Amend §63.04 by revising paragraph (a)(4) to read as follows:

§63.04 Filing procedures for domestic transfer of control applications

(a) * * *

(4)(i) The name, address, citizenship and principal business of any person or entity that directly or indirectly owns ten percent or more of the equity interests and/or voting interests,

or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those entities (to the nearest one percent). Where no individual or entity directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect.

(ii) An ownership diagram that illustrates the applicant's vertical ownership structure, including the direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to paragraph (a)(4)(i) of this section. Each such individual or entity shall be depicted in the ownership diagram and all controlling interests labeled as such.

* * * * *

- 8. Amend § 63.12 by redesignating paragraph (c)(3) as paragraph (c)(4) and add a new paragraph (c)(3) to read as follows:**

§63.12 Processing of international Section 214 applications.

* * * * *

(c) * * *

(3) An individual or entity that is not a U.S. citizen holds a ten percent or greater direct or indirect equity or voting interest in any applicant; or

* * * * *

9. Amend §63.18 by revising paragraph (h) and redesignating paragraphs (p), (q) and (r) as paragraphs (r), (s), and (t), and adding new paragraphs (p) and (q) to read as follows:

§63.18 Contents of applications for international common carriers.

(h)(1) The name, address, citizenship and principal businesses of any individual or entity that directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those entities (to the nearest one percent). Where no individual or entity directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect.

(2) An ownership diagram that illustrates the applicant's vertical ownership structure, including the direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to paragraph (h)(1) of this section. Each such individual or entity shall be depicted in the ownership diagram and all controlling interests labeled as such.

(3) The applicant shall also identify any interlocking directorates with a foreign carrier.

Note to paragraph (h): Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria:

Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the

relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain that is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of “carrier,” then X's interest in “carrier” would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in “carrier” would be 7.8 percent (0.30×0.26 because A's interest in X is less than 50 percent). Under the 25 percent attribution benchmark, X's interest in “carrier” would be cognizable, while A's interest would not be cognizable.

* * * * *

(p) With respect to each applicant for which an individual or entity that is not a U.S. citizen holds a ten percent or greater direct or indirect equity or voting interest in the applicant, file national security and law enforcement information regarding the applicant. The information may include:

- (1) Corporate structure and shareholder information;
- (2) Relationships with foreign entities;
- (3) Financial condition and circumstances;
- (4) Compliance with applicable laws and regulations; and
- (5) Business and operational information, including services to be provided and network infrastructure. The instructions for submitting the information to be filed are available on the FCC website. The required information shall be submitted separately from the application and shall be filed via an FCC website.

(q) Each applicant shall make the following certifications:

(1) To comply with all applicable Communications Assistance to Law Enforcement Act (CALEA) requirements and related rules and regulations, including any and all FCC orders and opinions governing the application of CALEA and assistance to law enforcement (see, e.g., the Commission's orders in conjunction with ET Docket No. 04-295, Communications Assistance for Law Enforcement Act and Broadband Access and Services, and the Commission's rules and regulations in part 1, subpart Z of this chapter—Communications Assistance for Law Enforcement Act);

(2) To make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to a valid and lawful request or legal process in accordance with U.S. law;

(3) To designate a point of contact located in the United States and who is a U.S. citizen or lawful permanent resident, for the service of the requests and/or valid legal process described in paragraph (q)(2) of this section and the receipt of other communications from the U.S. government;

(4) That all information submitted, whether at the time of submission of the application or subsequently in response to either Commission or Executive Branch agency request, is substantially accurate and complete in all significant respects to the best of applicant's knowledge at the time of the submission. While the application is pending, as defined in §1.65(a) of this chapter, the applicant agrees to promptly inform the Commission and, if the applicant originally submitted the information in response to the request of another Executive Branch agency, that agency, if the

information in the application is no longer substantially accurate and complete in all significant respects; and

(5) That the applicant understands that if the applicant fails to fulfill any of the conditions to the grant of its application and/or the information provided to the United States Government is materially false, fictitious, or fraudulent, the applicant may be subject to all remedies available to the United States Government, including but not limited to revocation or termination of the applicant's Commission authorization, and criminal and civil penalties, including penalties under 18 U.S.C. 1001.

* * * * *

10. Amend §63.24 by revising paragraphs (e)(2) and (f)(2)(i) to read as follows:

§63.24 Assignments and transfers of control.

* * * * *

(e) * * *

(2) The application shall include the information requested in paragraphs (a) through (d) of § 63.18 for both the transferor/assignor and the transferee/assignee. The information requested in paragraphs (h) through (p) of § 63.18 is required only for the transferee/assignee. The ownership diagram required under § 63.18(h)(2) shall include both the pre-transaction and post-transaction ownership of the authorization holder. At the beginning of the application, the applicant shall include a narrative of the means by which the proposed transfer or assignment will take place.

* * * * *

(f) * * *

(2) * * *

(i) The information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee. The ownership diagram required under § 63.18(h)(2) shall include both the pre-transaction and post-transaction ownership of the authorization holder;

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